

Appl. No. 10/080,458
Atty. Docket No. G-275 (CP-1235)
Amdt. dated 04/28/2005
Reply to Office Action of 03/29/2005
Customer No. 27752

REMARKS

Application Status

Claims 1-24 are pending in the present application. No claim amendments have been made. No additional claims fee is believed to be due.

Notice of Non-Responsive Amendment and Provisional Double Patenting Rejection Over Co-Pending US Application No. 10/080,459

As set forth in the Office Action of September 21, 2004, the Examiner provisionally rejected claims 1-7, 9, 15-17, and 23-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending US Application No. 10/080,459. Additionally, the Examiner provisionally rejected claims 8, 10-14, and 18-22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending US Application No. 10/080,459 in view of Applicant's statements in the Background of the Invention section of the specification of the present Application and US Patent No. 6,432,147 to Dias et al ("Dias").

In Applicant's Reply of December 21, 2004, and in response to the above provisional obviousness-type double patenting rejection, it was stated that Applicant is prepared to file a properly executed terminal disclaimer in compliance with 37 CFR 1.321(c) upon receiving notice of allowance of co-pending US Application No. 10/080,459.

In the Office Action of March 29, 2005, the Examiner asserts that Applicant's Reply of December 21, 2004 is not fully responsive because only objections or requirements as to form not necessary for examination of the claims can be held in abeyance under 37 CFR 1.111. Applicant respectfully traverses the Examiner's assertion that Applicant's Reply of December 21, 2004 is not fully responsive based upon the following comments.

Although 37 CFR 1.111 provides that only objections or requirements as to form not necessary for examination of the claims can be held in abeyance, Applicant respectfully submits that Applicant's Reply of December 21, 2004 was proper and fully responsive because the obviousness-type double patenting rejection set forth in the Office Action of September 21, 2004 was a *provisional* obviousness-type double patenting rejection. The double patenting issue was raised not in view of a commonly assigned granted patent. Instead, as the issue was raised in view of a co-pending application, for which no Notice of Allowance had been received at the time of Applicant's Reply of December 21, 2004, there

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existed no *actual* rejection to which a reply under 37 CFR 1.111 is required. In support of this position, Applicant respectfully directs the Examiner to MPEP 804(I)(B), which provides that “[t]he merits of such a provisional rejection *can* be addressed by both the applicant and the examiner without waiting for the first patent to issue” (emphasis added). Notably, the MPEP does not state that the merits of a provisional double patenting rejection *shall* be addressed by both the applicant and the examiner without waiting for the first patent to issue. Moreover, MPEP 804(I)(B) describes when a provisional rejection should be maintained, withdrawn, and/or converted to an actual double patenting rejection during subsequent examination.

Accordingly, Applicant respectfully submits that Applicant's Reply of December 21, 2004 was proper and fully responsive to the Office Action of September 21, 2004.

Terminal Disclaimer Under 37 CFR 1.321(c)

Notwithstanding the above comments, a properly executed terminal disclaimer in compliance with 37 CFR 1.321(c) is submitted herewith because a Notice of Allowance of co-pending US Application No. 10/080,459 was sent on March 23, 2005.

Therefore, it is believed that any obviousness-type double patenting rejection of the claims of the present application has been obviated.

CONCLUSION

In light of the remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicant has made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicant respectfully requests reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-24.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

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Signature

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